

DECISION



12317
Transp
Mr. Lieberman

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194981

DATE: December 12, 1979

R MATTER OF: Complex Industries & Associates, Inc. *D.3357*

DIGEST:

Prompt payment discounts were properly taken by agency where payment was made within 20 days of date that assignment of contract proceeds was legally effectuated; delay in perfecting assignment is responsibility of assignee who has legal obligation to fulfill applicable statutory filing requirements.

2 Complex Industries & Associates, Inc. (Complex), formerly What-Mac Contractors, Inc., requests review of a settlement by our Claims Division disallowing Complex's claim for reimbursement of prompt payment discounts totaling \$11,462.73 taken by the Department of the Navy under contract No. N00612-79-D-7001. *1*

The contract, for escort/guard services, contains a provision permitting a five percent, 20-day prompt payment discount. Invoices for services performed were to be sent to the contracting officer for approval before being sent to the disbursing officer for payment.

On November 28, 1978, the contracting officer signed a form, later sent to the assignee, acknowledging receipt of a notice of assignment together with a true copy of the instrument of assignment. However, from the record before us, it is unclear whether the contracting officer actually received a true copy of the instrument of assignment. This form was mailed to the assignee along with a letter dated December 1, 1978, which states only that the enclosure acknowledges receipt of a copy of the notice of assignment, and that two copies of the notice have been forwarded to the disbursing officer.

~~008084~~

111108

The disbursing officer advised the assignee by letter dated December 14, 1978, that he had received two copies of the notice of assignment from the contracting officer, and that he required an original and one copy of the notice of assignment and a true copy of the instrument of assignment from the assignee. The disbursing officer further advised the assignee that payment of an already submitted invoice dated December 1, 1978, was being withheld pending receipt of these documents.

No reply was received by the disbursing officer and on February 9, 1979, the disbursing officer sent a second request to the assignee. On March 8, 1979, the requisite documents were received by the disbursing officer from the assignee. We note that the instrument of assignment received by the disbursing officer is undated and makes no reference to the specific contract to which it relates; the only date appearing on it is February 20, 1979, when the assignment was notarized as a true copy. In the interim, the disbursing officer also had withheld payment on four additional invoices which it had received from Complex. On March 16, 1979, the disbursing officer issued payment to the assignee, taking a five percent prompt payment discount on three of the previously received invoices.

Complex contends that it should be paid the prompt payment discount and that the Navy did not notify the assignee or the contractor ". . . of any problem with the assignment of the contract until February 1978, (almost) 80 days after . . ." the contracting officer received notice of the assignment.

The Navy took the discount on the theory that the 20 days did not begin to run until March 8, 1979, because this is the date on which it first received a correct invoice under the terms of the contract's discounts clause. This clause provides that:

"In connection with any discount offered, time will be computed * * *, from the date correct invoice or voucher is received in the office specified by the

Government, if the latter date is later than date of delivery." [Emphasis supplied.]

The Assignment of Claims Act, 31 U.S.C. § 203 (1976) (Claims Act) provides:

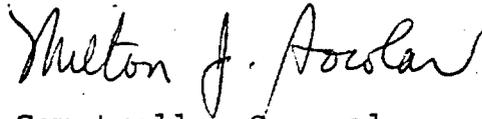
"That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; * * * and (c) the disbursing officer, if any, designated in such contract to make payment." [Emphasis supplied.]

Since the required documentation had not been filed with the designated disbursing officer, payment could not have been made to the assignee. It also would have been inappropriate to pay the contractor since the disbursing officer was on notice that the funds were intended to be assigned. To have paid the contractor would have subjected the Government to possible double liability in the event that the contractor and the assignee contested to whom the monies were due. Under these circumstances we have held that, as a practical matter, the invoices were not "correct" under the discounts clause and not for payment until the assignment documents were received by the officials designated to receive them. Urban Laboratories, Inc., B-192774, April 16, 1979, 79-1 CPD 268; Ira Gelber Food Services, Inc., B-185846, May 11, 1977, 77-1 CPD 334.

Complex's contention that the Navy was dilatory in advising it and the assignee of the "problem" with the assignment of the contract is untenable. The contracting officer advised the assignee that it had sent copies of the notice of assignment to the disbursing

officer, and the disbursing officer specifically advised the assignee of its need for the assignment documents. Moreover, the Claims Act, supra, specifically provides that it is the responsibility of the assignee to provide appropriate documentation to the disbursing officer, as well as to the contracting officer. This being the case, we believe that the obligation to expeditiously submit these documents rests solely with the assignee. The Navy cannot be held liable for the assignee's failure to promptly fulfill its statutory obligations.

The settlement issued by the Claims Division disallowing Complex's claim is correct and must be sustained.



For The Comptroller General
of the United States